

Remarks/Arguments

I. Amendments to the Specification

As described above, the specification is amended herein to include a description of new Figure 5A and to include reference numbers associated therewith. Supporting description of new Figure 5A is found in the originally filed specification on page 5, lines 22-27. As such, it is believed no new matter has been introduced as a result of these amendments.

II. Amendments to the Drawings

An attached sheet including new Figure 5A is enclosed herewith. Figure 5A shows flanges through which the through pin forms a pivot axis to allow the handle to pivot about the pivot connection formed between the flanges and the axle. These features are described on page 5, lines 22-27 of the originally filed specification. As such, it is believed the addition of Figure 5A does not constitute new matter.

III. Amendment to the Claims

Before entry of this amendment, claims 24, 26, and 30-38 were pending in the above-referenced application. After entry of this Amendment claims 24, 26, 30, and 32-39 will be pending in the above-referenced application, with claims 24, 26, and 30 being independent claims. Dependent claim 31 is cancelled, and dependent claim 39 is added by this Amendment. Claims 24, 26, 30, 32, and 36 are amended herein.

Claims 32 and 36 are amended to correct various informalities. More particularly, line 3 of claim 32 is amended to replace "second" with "third," and line 3 of claim 36 is amended to replace "axis of rotation" with "axle."

In addition, the scope of claim 24 is broadened by removing the words "orthogonal to said first axis of rotation" from lines 7 and 8. Claim 24 is also amended to further define the handle base member as including "a first leg and a second leg extending from a base portion," and to recite the position of the first axis of rotation "at a midpoint of said base portion."

Claim 26 is also amended to recite the position of the first axis of rotation "at a midpoint of said base," and to recite a first side "to one side of said midpoint" and a second side "to another side of said midpoint."

Further, claim 30 is amended herein to include all the limitations recited in dependent claim 31, which is cancelled herein.

IV. Objections to the Drawings

The drawings are objected to under 37 C.F.R. § 1.83(a) for not showing every feature of the claimed invention. More particularly, with reference to claim 24, the Examiner asserts that the second axis, as shown by grip 44 in Fig. 12, is not orthogonal to the first axis 80. As described above, claim 24 has been amended to remove the words “orthogonal to said first axis of rotation” from lines 7 and 8.

It is also asserted with reference to claim 30 and Figs. 3-5 that the first axle 50 is not shown as rotatably connected with the base member 42, which is described on page 5, lines 22-27 of the specification. As described above, new Figure 5A has been added to show the through pin connected with flanges on the U-shaped bracket. As such, the through pin forms a pivot axis about which the could pivot.

For at least these reasons, it is believed the drawings are no longer objectionable, and such indication is earnestly requested.

V. Objections to Claims 32 and 36

In the Office action, the Examiner objected to informalities in claims 32 and 36. More particularly, the Examiner pointed out in claim 32, line 3, that one of the recitations of “second” should presumably be changed to “third.” In addition, the Examiner noted that the recitation of “said first axis of rotation” in lines 2-3 of claim 36 lacks antecedent basis. As described above, line 3 of claim 32 is amended herein to replace the first recitation of “second” with “third,” and line 3 of claim 36 is amended herein to replace “first axis of rotation” with “second axle”. For at least these reasons, it is believed claims 32 and 36 are no longer objectionable, and such indication is earnestly requested.

VI. Rejection of Claims under 35 U.S.C. § 102

In the Office action, claims 26 and 30-38 are rejected under 35 U.S.C. § 102 as being anticipated by various references cited by the Examiner.

A. Claim 26

In the Office action, claim 26 is rejected under 35 U.S.C. § 102(e) as being anticipated by Cybex International, Inc. (Commercial Strength Systems catalog, April 2000, pgs. 9 and 36).

Under 35 U.S.C. § 102, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See MPEP § 2131. There is at least one aspect of the invention defined by independent claim 26 not taught or suggested by the Cybex International, Inc. reference. Claim 26, as amended herein, recites an exercise machine handle assembly comprising a handle member having “a base rotatably connected to said arm assembly about a first axis of rotation, the first axis of rotation at a midpoint of said base.” Claim 26 further recites “said first side being heavier than said second side such that when said exercise machine is not in use, said handle member rotates to an upright position in which first side is below said second side.”

The Cybex International, Inc. reference discloses an exercise device with a handle having a base. However, the Cybex International, Inc. reference discloses a rotatable connection between the exercise machine and base that is offset toward one side of the base, as opposed to being at a midpoint. As such, the Cybex handle member rotates to an upright position as a function of the offset rotation point, rather than one side of the base being heavier than another side of the base about an axis of rotation located at a midpoint of the base.

Thus, it is respectfully submitted that, for at least the reasons discussed above, the Cybex International, Inc. reference does not disclose or suggest all of the limitations of amended claim 26. As such, claim 26 is patentable under 35 U.S.C. § 102(e) over the Cybex International, Inc. reference and is in form for allowance, and such indication is respectfully requested.

B. Claims 30, 32-36, and 38

In the Office action, various rejections of claims 30, 32-36, and 38 were raised under 35 U.S.C. § 102 in light of the Webber et al. (U.S. Pat. No. 6,579,213); Telle (U.S. Pat. No. 5,344,374); and Fulks (U.S. Pat. No. 6,500,106). As discussed above, independent claim 30 is amended herein to include the limitations of dependent claim 31. As such, the aforementioned rejections of claims 30, 32-36, and 38 raised under 35 U.S.C. § 102 are rendered moot.

Thus, it is respectfully submitted that, for at least the reasons discussed above, claims 30, 32-36, and 38 are patentable under 35 U.S.C. § 102 over Webber et al., Telle, and Fulks and are in form for allowance, and such indication is respectfully requested.

C. Claims 30, 31, 34, 36, and 37

In the Office action, claims 30, 31, 34, 36, and 37 are rejected under 35 U.S.C. § 102(b) as being anticipated by Berne (U.S. Pat. No. 2,921,791).

Under 35 U.S.C. § 102, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See MPEP § 2131. There is at least one aspect of the invention defined by independent claim 30 not taught or suggested by Berne. Claim 30 of the subject application recites “a first axle rotatably connected with the base member.” Berne does not teach or suggest a first axle rotatably connected with a base member as recited in claim 30. The exercising apparatus in Berne includes a handle grasp member 35b connected with a thrust rod 35 extending therefrom. See Berne patent, Col. 6, ll. 24-27; and Fig. 9. The thrust rod 35 is fixedly welded to a threaded ring 35a. The threaded ring 35a is screwed down on a socket member 6e. See Berne patent, Col. 6, ll. 24-26; and Fig. 9. In the Office action, the socket member 6e is equated with the first axle of claim 30. There is no relative rotational movement between the handle 35b, the threaded ring 35a, and the socket 6e. The socket member 6e is connected with a ball 6d on an end of a stud extending from the extension arm 6a. See Berne patent, Col. 6, ll. 19-24; and Fig. 9. Thus, the handle grasp member 35b of Berne is not rotatably connected with the socket member 6e. For at least this reason, Berne does not anticipate amended claim 30.

Further, as discussed above, claim 30 has been amended to include the limitations of dependent claim 31. More particularly, claim 30 has been amended to recite that “the first axle and the second axle may be longitudinally aligned during use.” In the Office action, the stud ball 6d of Berne is equated with the second axle of claim 30.

The Office action asserts that “Fig. 9 shows the first and second axle nearly longitudinally aligned and it can be seen that the first axle and the second axle clearly may be longitudinally aligned during use at some point.” This conclusion is respectfully disagreed with. Longitudinal alignment of the first and second axles would require alignment of member 35 with

members 6b/6a (see Fig. 9). It is believed that the physical attributes of the socket member 6e and the stud ball 6d would prevent the rod 35 from rotating to longitudinally align with the rod 6d. At best, the rod member 35 will be angularly oriented with respect to members 6b/6a. Further, member 35 will be offset from 6b/6a by the dimension of the socket member 6e. Thus, Berne does not disclose longitudinal alignment of the first and second axes.

Thus, it is respectfully submitted that, for at least the reasons discussed above, Berne does not disclose or suggest the invention of claim 30. As such, claim 30 is patentable under 35 U.S.C. § 102(b) over Berne. Claims 34, 36, and 37 depend from and include all of the limitations of claim 30. Thus, for at least the same reasons discussed above with regard to claim 30, it is believed that claims 34, 36, and 37 are patentable under 35 U.S.C. § 102(b) over Berne.

Therefore, it is believed that claims 30, 34, 36, and 37 are in form for allowance and such indication is respectfully requested.

VII. Rejection of Claims under 35 U.S.C. § 103

Claims 24, 30, 32-34, 36-38 are rejected as being obvious under 35 U.S.C. § 103(a), as set forth in the Office action.

A. Claim 24

In the Office action, claim 24 is rejected as being unpatentable under 35 U.S.C. § 103 over Habing (U.S. Pat. No. 5,417,633) in view of Webber et al.

To establish a prima facie case of obviousness, the prior art reference, or references when combined, must teach or suggest every limitation of the claimed invention. See MPEP § 2143. Habing, either alone or in combination with Webber et al., does not teach or suggest all the claim limitations of amended claim 24. As amended herein, claim 24 recites a handle base member “including a first leg and a second leg extending from a base portion,” and the “base portion rotatably attached to said arm assembly,” and “rotating with respect to said arm assembly about a first axis of rotation at a midpoint of said base portion.” In addition, claim 24 recites “a grasping member connected with said first leg and said second leg.” Further, claim 24 recites the handle base member “further comprises an asymmetrical shape.”

Habing discloses an exercise apparatus with a hand grip assembly including an angle bracket 158 rotatably connected with a press arm 130' and supporting a hand grip 160. See Habing patent, Col. 5, ll. 3-12; and Fig. 5. However, Habing discloses a rotatable connection between the press arm and angle bracket that is offset toward one side of the angle bracket, as opposed to being at a midpoint. As such, the Habing hand grip assembly rotates to an upright position as a function of the offset rotation point, rather than an asymmetrically shaped base about an axis of rotation located at a midpoint of the angle bracket. The handle 22 disclosed in Webber et al. comprises a grip member or roller 44 rotatably mounted between opposite arms 45 of a generally C-shaped bracket. See Webber et al. patent, Col. 5, ll. 47-53; and Fig. 7. However, Webber et al. does not teach or suggest a handle base member with an asymmetrical shape as recited in claim 30. Therefore, the combination of Habing and Webber et al. suggests a handle base member that rotates to an upright position as a function of an offset rotation point, rather than a handle base member having an asymmetrical shape about an axis of rotation located at a midpoint of the base portion.

Thus, it is respectfully submitted that, for at least the reasons discussed above, claim 24 is patentable under 35 U.S.C. § 103(a) over Habing in view of Webber et al. and is in form for allowance and such indication is respectfully requested.

B. Claims 30, 32-34, and 36-38

In the Office action, claims 30, 32-34, and 36-38 are rejected as being unpatentable under 35 U.S.C. § 103 over Fulks in view of Simonson (U.S. Pat. No. 5,788,614). As discussed above, claim 30 has been amended herein to include the limitations of dependent claim 31. As such, the aforementioned rejections of claims 30, 32-34, and 36-38 raised under 35 U.S.C. § 103(a) are rendered moot.

Thus, it is respectfully submitted that, for at least the reasons discussed above, claims 30, 32-34, and 36-38 are patentable under 35 U.S.C. § 103(a) over Fulks in view of Simonson and are in form for allowance, and such indication is respectfully requested.

Conclusion

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Application No. 09/848,112
Reply to Office action of May 21, 2004

For at least the various reasons discussed herein, it is believed that claims 24, 26, 30, and 32-39 are in form for allowance, and such indication is respectfully requested. This Amendment and Response is filed in response to the final Office action of May 21, 2004. A petition for a three month extension of under 37 C.F.R. § 1.136(a) is filed herewith, making this Amendment due on or before Monday, November 22, 2004. The Commissioner is hereby authorized to charge Deposit Account No. 04-1415 the amount of \$1,770 to cover the \$980 extension of time fee and the \$790 Request for Continued Examination (RCE) fee. It is believed no further fees are due with respect to the filing of this Amendment; however, if additional petitions or fees are required, please consider this a request therefor and authorization to charge Deposit Account No. 04-1415 accordingly.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Reply to Office action of May 21, 2004

Amendments to the Drawings:

An attached sheet including new Figure 5A is enclosed herewith. This sheet, which includes Figures 5 and 5A, replaces the original sheet including only Figure 5.

New Figure 5A illustrates the handle bracket with flanges 48' through which the through pin 52 forms a pivot axis to allow the handle to pivot about the pivot connection formed between the flanges and the axle 50.